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9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 RAYMOND J. SMITH,
13 Plaintiff,
14 vs.
15 HUNT & HENRIQUES,
16 Defendant.
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CASE NO.: 5:12-cv-04150-HRL

**REPLY MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT OF MOTION FOR
SANCTIONS UNDER RULE 11 BY
DEFENDANT HUNT &
HENRIQUES**

Date: November 5, 2013
Time: 10:00 a.m.
Crtrm: 2 - 5th Floor

The Honorable Howard R. Lloyd

1 **I. ARGUMENT**

2 Plaintiff Raymond J. Smith (“Smith”) has wholly failed to oppose the
3 motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure filed
4 by defendant Hunt & Henriques (“H&H”). The Court should deem Smith’s
5 failure to file an opposition as his consent to the granting of the motion.

6 H&H filed and served its motion through the Court’s Electronic Case Filing
7 system (“ECF”) on September 30, 2013, noticing a hearing for November 5, 2013.
8 *See* Doc. No. 55. Pursuant to Local Rule 7-3, Smith’s opposition was due no later
9 than fourteen days after the motion was filed and served through ECF, *i.e.*, by
10 October 14, 2013. *See* L.R. 7-3(a). A review of the Court’s online docket system
11 (PACER), reflects that, as of October 21, 2012, Smith has not filed an opposition.

12 When a party “does not oppose a motion, that party must file with the Court
13 a Statement of Nonopposition within the time for filing and serving any
14 opposition. *See* L.R. 7-3(b). “Once a reply is filed, no additional memoranda,
15 papers or letters may be filed without prior Court approval,” except for an
16 Objection to Reply Evidence or a Statement of Recent Decision. *See* L.R. 7-3(d).
17 Thus, “the failure to file an opposition to a motion . . . is grounds for granting the
18 motion.” *Esparza v. Federal Deposit Ins. Corp.*, 2010 WL 5102874, *1 (N.D.
19 Cal. Dec. 8, 2010) (granting defendant’s unopposed motion to dismiss) (citing
20 *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir.1995)).

21 As noted in H&H’s opening memorandum, and as now confirmed by the
22 lack of an opposition, the claims in the First Amended Complaint (the “FAC”)
23 filed by Smith are frivolous and without factual foundation or legal support.

24 **II. CONCLUSION**

25 Because Smith has effectively consented to the granting of H&H’s motion
26 for sanctions under Rule 11, and for the unopposed reasons stated in H&H’s
27 Memorandum of Points and Authorities, the Motion for Sanctions under Rule 11
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1 should be granted. Accordingly, H&H respectfully request that the Court issue an
2 Order sanctioning counsel for Smith, pursuant to Rule 11 of the Federal Rules of
3 Civil Procedure.

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5 DATED: October 21, 2013

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